IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2467 OF 1994

M/S KANNAWAR CLOTH CENTRE — PETITIONER

VERSUS

THE UNION OF INDIA AND ANOTHER — RESPONDENTS

Mr.V.V.Bhavthankar, Advocate for the petitioner.
Mr.K.B.Chaudhary, Standing Counsel for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 11/06/2015

ORAL JUDGMENT :

1. This petition was admitted by order dated 11/08/1994.

2. I have heard Mr.Bhavthankar and Mr.K.B.Chaudhary, learned Advocates for the respective parties. After considering their submissions, it is revealed that the impugned order dated 30/06/1994 has been passed on the basis of the record available with the respondents.

3. The petitioner has contended that the provisions of the Employees' Provident Fund and Misc.Provisions Act, 1952 is not applicable to the petitioner. The respondent is mis-conceived in coming to the conclusion that M/s Kannawar Cloth Centre, Nanded and M/s

Kannawar Saree Centre, Nanded is one single establishment. It is stated that both the establishments are independent of each other. The Cloth Centre was started in 1977 in Shop No.4 and 5 of the premises on the ground floor and Saree Centre was started in 1989 in Shop nos.3, 4, 5 and 6 on the first floor, which was subsequently constructed in 1988 and 1989.

4. The petitioner further submits that both the firms have been registered with the Registrar of Firms independently. Both of them have been registered under the Bombay Shops and Establishments Act separately. There is no unity of labour or business between the two. Both the partnership firms are independently registered. The partners to each of these 2 firms are different. It is only because a common entrance is utilized by both the firms that the respondent has mistakenly construed that both the shops/establishments are one and the same and therefore the provisions of the Act of 1952 have become applicable owing to the fact that the number of employees are more than 20.

5. Mr.Bhavthankar submits that an officer of the Respondent/Department made a visit to both the premises and based on such a cursory enquiry, has concluded that both the establishments are one and the same. He submits that the order dated 30/06/1994,

which is impugned in this petition, has been passed without a proper enquiry, without allowing the petitioner to file the documents and without enabling the petitioner to address the mind of the authority, which delivered the impugned order. He makes a grievance that the conclusions drawn in the impugned order have led to the allotment of Establishment code number and the respondent authorities therefore seek to recover purported provident fund dues for the past about 25 years.

6. Mr.Bhavthankar, therefore, submits that if the matter is remitted to the respondent/authority for enabling the petitioner to file relevant documents alongwith an affidavit within 6 (six) weeks, the respondent authority may then hear the petitioner and decide the issue on its own merits.

7. Mr.K.B.Chaudhary has vehemently opposed the contentions of the petitioner as well as the request made for a fresh hearing of the matter. He points out that M/s Kannawar Cloth Centre was registered in 1977 by the Registrar of Firms. The address of the Cloth Centre is ambiguous as it indicates place of business as Nanded, Tal. and Dist. Nanded.

8. He further points out that M/s Kannawar Saree Centre appears to

have been registered in 1989 showing shop Nos. 4 and 5. As such, the contention of Mr.Bhavthankar is incorrect that the Cloth Centre was in shop Nos. 4 and 5 on the ground floor and Saree Centre was in Shop Nos. 3, 4, 5 and 6 on the first floor. His contention is contradicted by documents on record at page Nos. 10 and 18 of the petition paper book.

9. Mr.Chaudhary has then drawn my attention specifically to paragraph No.5 of the affidavit in reply filed by respondent No.2, which reads as under :-

> "*5. With reference to the para 2 of the petition, I say that though two partnership firms are shown as separate on paper, yet they are one and the same. It is a family partnership concern on the basis of the information gathered and examination of the books of accounts and other related documents. It is established beyond doubt that the establishment is carrying on its business of Trading and Commercial with the Cloth Centre on the ground floor and Saree on the first floor with the common entrance and staircase from the middle of the Cloth Centre. The establishment is also carrying on common publicity except maintaining of separate account for the purpose of income tax. The employees of the establishment are transferable mutually between the two units and this clearly goes to show that the two units are functionally integrated and is only one organization. The common things established are as follows :-*
>
> *a. Inter-dependability of one establishment over other ;*
>
> *b. Interlink between the establishment ;*

c. Relationship between two units. oth the unit establishments constitute one integral whole ;

d. Unity of Management, control, supervision of establishment ;

e. Unity of ownership ;

f. Unity of employment (inter-transferability of employees) ;

g. Managerial and functional integrality ;

h. Geographical proximity in respect of both units."

10. He then submits that the Enforcement Officer conducted an enquiry and submitted his report u/s 13 of the Act of 1952 and it was therefore noticed that both the establishments were in fact one and the same and the said establishments have adopted a mis-conceived stand that they are independent of each other. He further submitted that the report of the Enforcement Officer, which is based on an enquiry is sufficient proof that the claim put forth by the petitioner is unsustainable.

11. Having considered the submissions of the rival sides, it is revealed that the petitioners were not heard to the extent of addressing the mind of the competent authority, which has passed the impugned order. A proper hearing before passing an order is the essence of the principles of natural justice. It is informed that ever since this petition was admitted and interim relief was granted in terms of prayer clause "D" leading to the staying of the operation of the impugned order dated

30/06/1994, the respondent / department has not proceeded further.

12. In the above backdrop and more so in the light of the statement made by Mr.Bhavthankar that both the establishments are in existence today and would fully co-operate with the respondents authorities, if an opportunity of hearing is granted, that I am inclined to accept the request of the petitioner.

13. In the light of the above, the impugned order dated 30/06/1994 is set aside. The petition is partly allowed and the matter is remitted back to the appropriate authority with the following directions :-

(a) The petitioner shall furnish all such documents before the respondent/authority on which they desire to place reliance in support of their respective stand, within 6 (six) weeks from today.

(b) The respondent / Provident Fund Authorities shall scrutinize the said documents and if felt necessary, may call for such documents from the petitioner, as deemed proper, within a period of 3 (three) weeks from the date of filing of the documents.

(c) The petitioner shall appear before the respondent Provident Fund authority at Aurangabad at 11.00 a.m. on 24/08/2015 and shall abide by the dates of hearing, as may be granted by the concerned authority.

(d) The petitioner shall file an affidavit alongwith the documents at the time of depositing the said documents before the said authority in support of the truthfulness of the documents placed on record.

(e) The respondent/authority shall hear the petitioner before passing an order.

(f) The petitioner shall not seek adjournments on frivolous or unreasonable grounds.

(g) The respondent authority shall restrain the petitioner from delaying the proceedings.

(h) Upon conclusion of the hearing, the respondent authority shall pass its order on its own merits.

14. Needless to state, the Respondent authorities would be at liberty to call for documents from M/s Kannawar Saree Centre, if felt necessary while deciding the case before it.

15. Rule is accordingly made partly absolute.

(RAVINDRA V. GHUGE, J.)